

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - SE/cor. Park Heights Avenue and Rainbow Court (3 Rainbow Court) 3rd Election District 3rd Councilmanic District Jerome L. Kolker, et ux Petitioners

BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 88-317-XA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception for a disabled person to have a home occupation in an R.C.5 zone, and variances to permit four persons other than the disabled person to be employed in the home office of the home occupation, as more particularly described on Petitioner's Exhibit 1.

The Petitioners, by Jerome L. Kolker, appeared, testified, and were represented by Richard Bloch, Esquire. Beverly J. Feldman, Larry Rosenthal, and Mr. & Mrs. Harry Eichner appeared as Protestants.

Testimony indicated that the subject property, known as 3 Rainbow Court, is zoned R.C.5. The Petitioner testified that since 1977, he has operated a wholesale lumber business from the subject property, which is his residence. The business involves buying lumber from the west coast and selling it to businesses in Pennsylvania, Maryland, Delaware and New York. He indicated all business, except billing, is done by telephone with no storing of inventory or lumber at the subject property. Mr. Kolker testified his personal involvement in every aspect of the business is necessary as decisions need to be made regularly and as necessitated. He indicated the work is stressful and difficult due to competition with various businesses, many of international size. He indicated that since 1977 he has employed from one to four persons at this location. Currently there are four employees who are necessary to keep control of the inventory records.

1) Date: 1/17/88 Page: 1 of 1
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April 18, 1988

Richard Bloch, Esquire
Shilling and Bloch
12th Floor, 20 S. Charles Street
Baltimore, Maryland 21201

RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE SE/cor. Park Heights Avenue and Rainbow Court (3 Rainbow Court) 3rd Election District - 3rd Councilmanic District Jerome L. Kolker, et ux - Petitioners Case No. 88-317-XA

Dear Mr. Bloch:

Enclosed please find the decision rendered on the above-referenced case. The Petitions for Special Exception and Zoning Variance have been Denied in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
of Baltimore County

Enclosures

cc: Mr. & Mrs. Harry Eichner
5 Susan Court, Owings Mills, Md. 21117

Ms. Beverly Feldman
10 Melissa Court, Owings Mills, Md. 21117

Mr. Larry Rosenthal
4 Susan Court, Owings Mills, Md. 21117

People's Counsel

File

Mr. Kolker testified that he begins his workday at 7:00 AM and ends his day anywhere from 5:30 PM to 7:30 PM. He indicated that in his opinion there is no exterior indication that a business is being conducted from his home. He indicated that on no occasion do customers come to his home.

Mr. Kolker testified that working from his home is required for health reasons. He testified that in 1981, he had triple by-pass surgery and as a result of his heart condition, a great deal of care is needed with respect to diet and rest. In support of his claim, Mr. Kolker introduced as Petitioner's Exhibit 2 a letter dated September 10, 1987 from Jeffrey L. Quarter, M.D. to Richard Bloch, Esquire regarding Mr. Kolker's health condition. Dr. Quarter's letter states, in part that Petitioner is,

"Involved in a business which provides him significant stress. The nature of his disease requires that he be able to take rests if necessary and he does do this on a daily basis. Additionally, because of the fact that coronary artery disease development is related very closely to diet, special preparations of his foods is needed and he does accomplish this well in his working and home environment."

If continuance of this would be possible, I do feel that it would be in his best interests from a health standpoint. If I can provide you with more information related to this issue, please feel free to contact me."

At the hearing it was pointed out to the Petitioner that no where in Dr. Quarter's letter does it state that Mr. Kolker is disabled. The Deputy Zoning Commissioner subsequently offered the Petitioner additional time to submit documentation supporting that Mr. Kolker is a disabled person as defined in Section 101 of the Baltimore County Zoning Regulations (B.C.Z.R.).

Testimony indicated that when the Petitioner found out that he was in violation of the zoning regulations and received a correction notice from the Zoning Office, he rented office space pending a decision on the Petitions filed.

The Protestants testified that they are opposed to the operation of the business out of the home as they fear the residential area will be expanded by

Stephen C. Bernhart, R.P.L.S., #168
Surveying & Land Planning
P.O. Box 244
Finksburg, Maryland 21048

October 28, 1987

Property Description

Being at the southeast corner formed by the intersection of Park Heights Avenue and Rainbow Court. Being Lot 1, Re subdivision of Parcel "A" Section Two, Rainbow Park. Plat Book No. 31, page 60. Also known as # 3 Rainbow Court in the 3rd (Third) Election District of Baltimore County, Maryland.

other individuals operating businesses out of their homes. The Protestants further disagreed with Mr. Kolker's testimony that there was no exterior evidence of a business being run from his residence. They indicated that the four to five cars parked out front each day by Petitioner's employees evidenced the business, as well as the more frequent visitation of utility and delivery trucks to the Petitioner's home than to other homes in the neighborhood.

The Petitioners request relief from Section 1A04.2B.8A, pursuant to Section 502.1, and from Section 307 of the (B.C.Z.R.).

Section 101 of the B.C.Z.R. defines a disabled person as follows:

Any person who at the time of the filing of a petition for special exception for a home occupation of a disabled person has been determined to be disabled or handicapped pursuant to the provisions and procedures prescribed in subsection 13-616(a)(1) of the Transportation Article of the Annotated Code of Maryland, 1977 Volume, 1980 Cumulative Supplement, as amended; in U.S.C.A. Sec. 416; in 29 U.S.C.A. Sec. 715; or in 42 U.S.C.A. Sec. 6001 (7). [Bill No. 27, 1981]

Neither at the time of the hearing, nor subsequent to the hearing, was any evidence introduced that indicates the Petitioner is a disabled person as defined by the B.C.Z.R. Therefore, regardless of whether or not the Petitioner presented sufficient evidence supporting the 502.1 requirements for a special exception or evidence of practical difficulty and unreasonable hardship for the variance request, the relief requested must be denied as there is no evidence to support the contention that Petitioner is disabled.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special exception and variances should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 18th day of April, 1988 that a special exception for a disabled person to have a home occupation in an R.C.5 zone, and variances to permit four persons other than the disabled person to be employed in the home office of the

PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a home occupation of a disabled person in an R.C.5 zone pursuant to section 1A04.2B.8A of the Baltimore County Zoning Ordinance.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition; and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

N/A
(Type or Print Name)

Signature

Address

City and State

City and State

City and State

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ENTRY OF APPEARANCE

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

Peter Max Zimmerman
Peter Max Zimmerman

The room which would be used for the office is 850 square feet and the house has a total of approximately 3,700 square feet. The room devoted to the home occupation use would, therefore, be approximately 23% of the total area of the house. This meets the limit of being less than twenty-five percent (25%) of the total area of the house.

Susan Sander Obrecht
Publisher

[illegible]

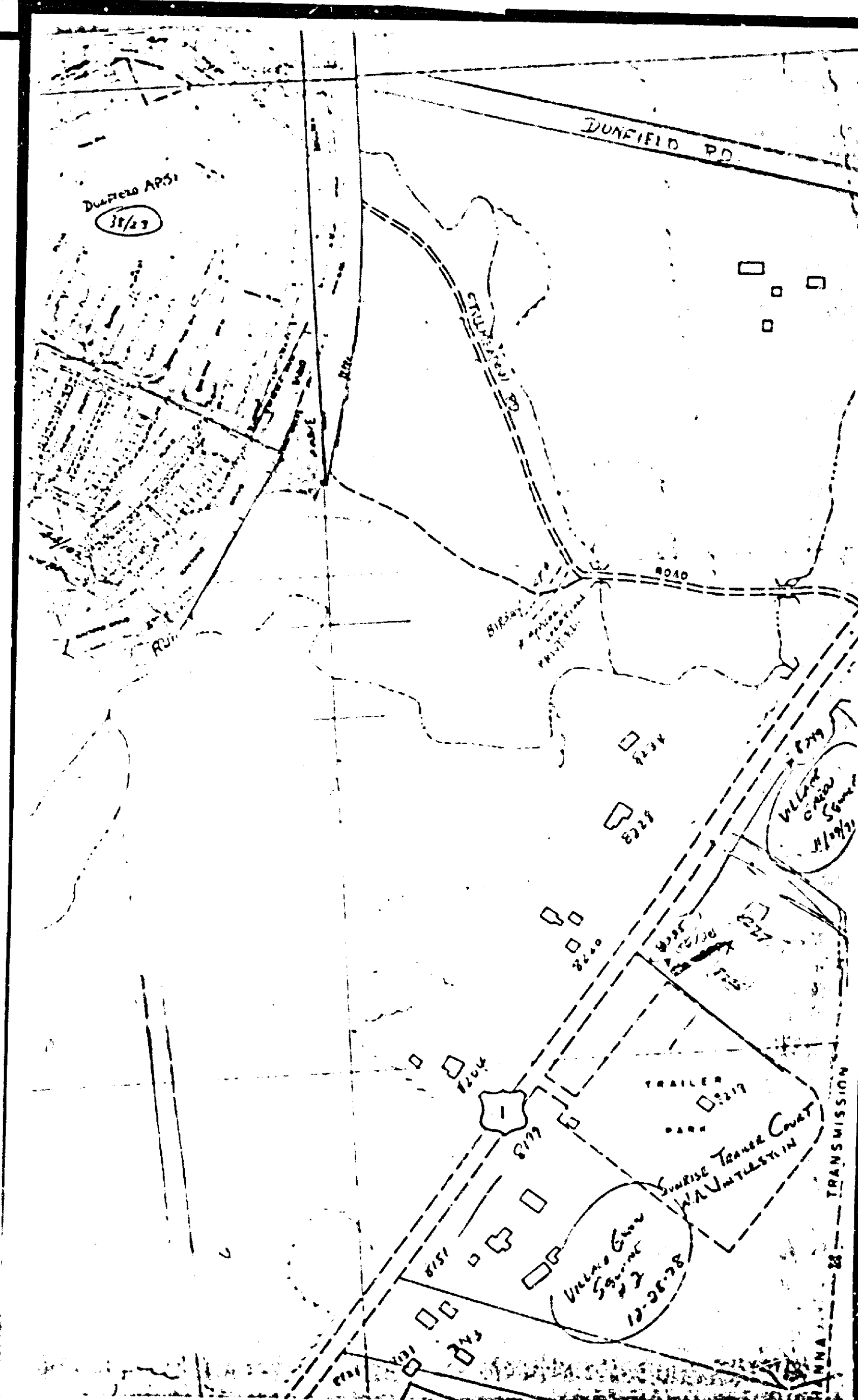
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Middle Georgia University
Tallahassee, FL AMOUNT \$ 99.71 her of
RECEIVED FROM (General Practice)
FOR State of FL 2/17/88
B B (4566666666666666) 7572

Jerome L. Kolker
JEROME L. KOLKER

District _____ Date of Posting _____
Post'd for: _____
Petitioner: _____
Location of property: _____
Location of Signs: _____

Remarks: _____
Posted by _____ Signature _____ Date of return _____
Number of Signs: _____

DATE 4/2/57 ACCOUNT AL 410
AMOUNT \$ 139.00
RECEIVED FROM —
U.S. AIR FORCE
FOR Transfer to Service Charge
B 8732 ***** 132.00 8330 100 167
4 new Bonds
VALIDATION OR SIGNATURE OF AGENT



BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

February 10, 1988

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

000

MEMBERS

Bureau of
Engineering
Department of
Traffic Engineering
State Roads Commission
Bureau of
Fire Prevention
Health Planning
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial
Development

Richard Bloch, Esquire
Shilling and Bloch, P.A.
12th Fl. - 20 South Charles Street
Baltimore, Maryland 21201

RE: Item No. 167 - Case No. 88-317-XA
Petitioner: Jerome L. Kolker, et ux
Petitions for Zoning Variance and
Special Exception

Dear Mr. Bloch:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kbb

Enclosures

cc: Stephen C. Barnhart
P.O. Box 24
Finksburg, Maryland 21048

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 465
Towson, Maryland 21204
494-3554

December 2, 1987



Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dennis F. Rasmussen
County Executive

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items numbers 159, 160, 161, 162, 163, 165, 166, and (167).

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

NSF:sb

RECEIVED
DEC 23 1987

ZONING OFFICE

Mr. J. Robert Haines
Page 2
November 12, 1987

Also, the entrance must be increased in width to a minimum of 25'.

It is requested that these revisions be made prior to a hearing date being set.

If you have any questions, please contact Larry Brocato of the office at 333-1350.

Very truly yours,

Creighton J. Mills, Jr.
Creighton J. Mills, Jr.
Acting Chief-Bureau of
Engineering Access Permits

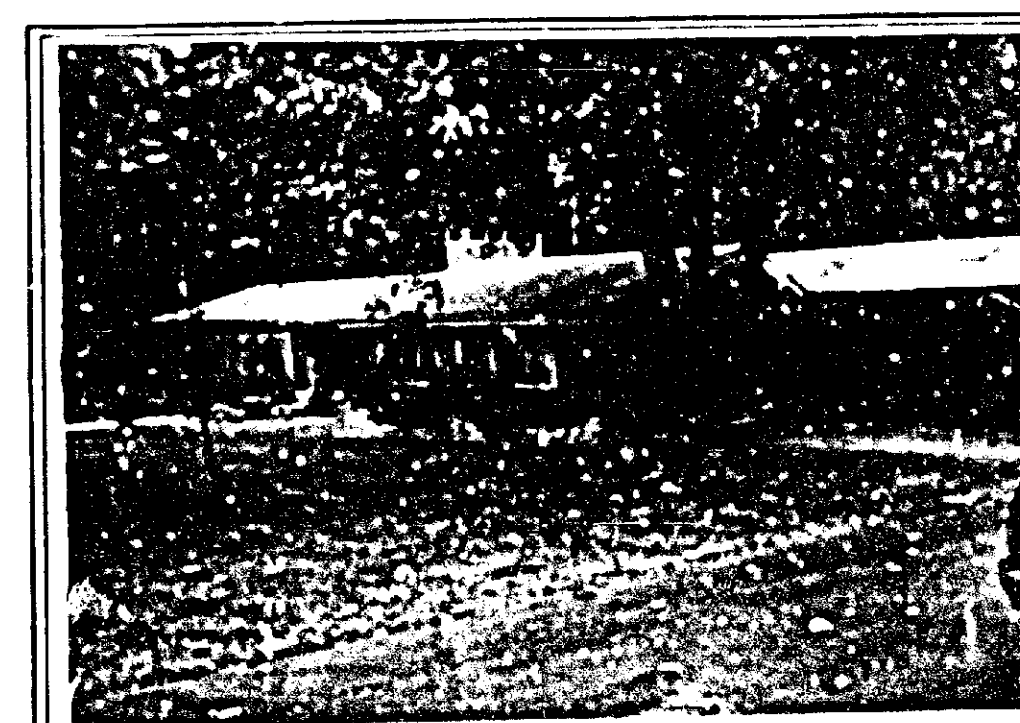
LB/es

cc: Stephen C. Barnhart
J. Ogle
attachment

PETITIONER(S) EXHIBIT (3)

PHOTOGRAPH ADDENDUM

Borrower/Client	Jerome L. & Shirley A. Kolker
Property Address	3 Rainbow Court
City/Township/Mills	County Baltimore State MD Zip Code 21117
Lender	



FRONT OF
SUBJECT PROPERTY

63-317-XA

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing the 12th day of November, 1987.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner: Jerome L. Kolker, et ux
Petitioner's Attorney: Richard Bloch, Esquire

Received by: James E. Dyer
Chairman, Zoning Plans
Advisory Committee



Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kessoff
Administrator

November 12, 1987

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204
Att: James Dyer

Re: Baltimore County
Item #167

Property Owner:
Jerome L. Kolker,
Location: SE/C Park
Heights Avenue
Maryland Route 129
and Rainbow Court
Existing Zoning:
Variance to permit four
persons other than the
disabled person to be
employed in a home office
used as a home occupation
of a disabled person.
Petitioner requests that
this petition be
considered and passed
upon separately from the
special exception
petition relating to
the same property to
which this petition
relates and a Special
Exception for a home
occupation of a disabled
person in an R.C. Zone
Area: 1.49 acres
District 3rd

RECEIVED
NOV 17 1987
ZONING OFFICE

Dear Mr. Haines:

On review of the submittal of October 9, 1987, the State Highway Administration, Bureau of Engineering Access Permits offers the following comments.

This plan must be revised to show entrance improvements within the State highway right-of-way on Park Heights Avenue.

These revisions include construction of Standard Type "A" combination curb and gutter with 10' radius curves and a 5' tangent section from the southern property line, and bituminous concrete paving as outlined on the attached sketch.

My telephone number is (301) 333-1350

Telecommunicator for Impaired Hearing or Speech
303-7555 Baltimore Metro - 800-451-0100 Metro - 800-452-5053 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James Dyer
Zoning Supervisor
FROM: James Thompson
Zoning Enforcement Coordinator
Item No.: 167 (if known)
SUBJECT: Petitioner: KOLKER (if known)

Date: 11/2/87

VIOLATION CASE: C-88-50

LOCATION OF VIOLATION: 3 RAINBOW COURT
DEFENDANT: JEROME KOLKER ADDRESS: 3 RAINBOW COURT
OWINGS MILLS, MD 21117

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME: FLORENCE SHAPIRO ADDRESS: 1 SUSAN COURT
OWINGS MILLS, MD 21117

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

TABATZNIK, BABITT, PRISTOOP, M.D., P.A.

2724 North Charles Street
Baltimore, Maryland 21218
Telephone 301-338-2092

Deborah Tabatnik, M.D.
Henry I. Babitt, M.D.
Alan S. Pristoop, M.D.
Stephen H. Pollock, M.D.
Jeffrey L. Quartner, M.D.
David A. Zeman, M.D.

September 10, 1987

Richard Bloch
20 S. Charles St.
Baltimore, Md. 21201

Re: Jerome Kolker

Dear Mr. Bloch:

Mr. Jerome Kolker is a 68 year old gentleman who is now 6 years post coronary artery bypass surgery. He is very involved in a business which provides him significant stress. The nature of his disease requires that he be able to take rests if necessary and he does do this on a daily basis. Additionally, because of the fact that coronary artery disease development is related very closely to diet, special preparations of his foods is needed and he does accomplish this well in his working and home environment.

If continuance of this would be possible, I do feel it would be in his best interests from a health standpoint. If I can provide you with more information related to this issue, please feel free to contact me.

Sincerely yours,
Jeffrey L. Quartner
Jeffrey L. Quartner, M.D.

JLQ/db

RECEIVED
NOV 2 1987

Baltimore County
Fire Department
Towson, Maryland 21204 256
494-4500

Paul H. Rencke
Chief

November 25, 1987

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204



Re: Property Owner: Jerome L. Kolker, et ux

Location: SE/C Park Heights Avenue and Rainbow Ct.

Item No.: 167

Zoning Agenda: Meeting of 11/10/87

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this bureau and the currents below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at intervals or feet along an approved road up to seven days with Baltimore County Standards as published by the Department of Public Works.
2. A second means of vehicle access is required for the site.
3. The vehicle dead end condition shown at EXCEEDS the maximum allowed by the Fire Department.
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1978 edition prior to occupancy.
6. Site plans are approved, as drawn.
7. The Fire Prevention Bureau has no comments at this time.

REMARKS: *Noted and Approved*
Special Inspection Division

/s/

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. J. Robert Haines
TO: Zoning Commissioner
P. David Fields
FROM: Director of Planning and Zoning
SUBJECT: Zoning Petition No. 88-317-A

Date: January 14, 1987

In view of the interpretive nature of this request, this office offers no comment.

P. David Fields per J. Haines
P. David Fields
Director

PDF:JGH:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel
File

CPS-00A

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. J. Robert Haines
TO: Zoning Commissioner
P. David Fields
FROM: Director of Planning and Zoning
SUBJECT: Zoning Petition No. 88-317-A

Date: January 14, 1987

In view of the interpretive nature of this request, this office offers no comment.

P. David Fields per J. Haines
P. David Fields
Director

PDF:JGH:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel
File

CPS-00B

RECEIVED
JAN 19 1987
ZONING OFFICE

RE: PETITION FOR SPECIAL EXCEPTION
NW/4 of Fullersdale Avenue, 150' NE of
Second Avenue - 9th Election District
Frank J. Curreri, Sr. - Petitioner
NO. 88-123-X (Item No. 52)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

This matter comes before the Zoning Commissioner as the result of a Petition for Special Exception for a home occupation of a disabled person, in accordance with Section 1801.1.C.9A of the Baltimore County Zoning Regulations (Bill No. 27, 1981).

The petitioner, Frank J. Curreri, Sr., testified that he has been in the insurance business for twenty years. In 1975, he and his partners purchased an office building for their business. During that same year, Mr. Curreri was advised that he would require surgery due to a serious heart condition. Further testing disclosed the need for a by-pass operation, which was performed in Milwaukee, Wisconsin, because of local limitations. After a recovery period of one year, the partnership was dissolved and the office building was sold. Following his recovery, Mr. Curreri began servicing his insurance clients from an accessory building located on his residential (D.R.S. 5) lot. His business efforts from this location necessitated improvements to the utility building, and following a hearing, it was determined that the operation of the business from that location constituted a zoning violation.

Mr. Curreri further testified that it was necessary for him to rest several times during the workday and submitted a report from his doctor regarding his condition as of August 29, 1979 (Petitioner's Exhibit 1), which remains the same. Presently, Mr. Curreri, his son, and a part-time secretary conduct the business from the subject property, the latter two people not being permanent members of his household. In addition, Mr. Curreri stated that some clients come to his house, but that they generally come only to pay premiums. He testified that he did not believe this home occupation would be

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detrimental to the requirements established in Section 502.1 of the zoning regulations.

Mrs. Margaret Koenig, a protestant, testified that most of the neighbors were long-time residents and that she felt some had moved away because of the business. She also indicated that the subject property is beautifully kept and that Mr. Curreri is a good neighbor, but that the business contributes to the traffic problem in the area. She stated that the floodlights installed by the petitioner are bothersome because their positioning, angle, and intensity light up the neighborhood to the detriment and inconvenience of the nearby residents.

Section 1801.1.C.9A was enacted by the County Council to give legitimacy to those businesses being conducted in residential zones by disabled persons who might not otherwise be employable and where such businesses are being conducted in dwellings or accessory structures located on the same lot which are compatible with their surrounding neighborhoods. In an effort to minimize the impact of a business operation in the residential zone in which it is located, this section establishes the following conditions:

1. Only three persons, including the disabled person and members of his immediate family living on the premises, may be employed.
2. The disabled person shall reside on the premises and must be determined to be so severely disabled as to be unable to engage in his occupation away from the premises.
3. The special exception shall expire upon the first to occur of the following events:
 - a. five years after issuance of the permit (intended to mean the granting of the special exception);
 - b. death of the disabled person;
 - c. termination of the disability; and
 - d. failure of the disabled person to permanently reside on the premises.

The regulation provides for the special exception to be continued beyond the initial five years, but only after another special exception is granted.

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LAW OFFICES SHILING AND BLOCH, P.A.

SUN LIFE BUILDING
315 CHARLES STREET
BALTIMORE, MARYLAND 21201

January 18, 1988

(301) 332-0100

REUBEN SHILING
RICHARD BLOCH
DAVID J. HIRSCH
THOMAS G. GARRISON

Mr. J. Robert Haines
Zoning Commissioner
Baltimore County Zoning Office
111 West Chesapeake Avenue
Towson, MD 21204

RE: Case No. 88-317 - A, S/E Corner Park Heights Ave. & Rainbow Court (3 Rainbow Court), 3rd Election District, Jerome L. Kolker, et ux, Petitioners

Dear Commissioner Haines:

Enclosed for filing in the above case are ten (10) copies of a Supplemental Statement to Petitioners' Special Exception Petition. Please forward a copy to the appropriate County agencies or departments to guide their comments.

Thank you very much for your cooperation.

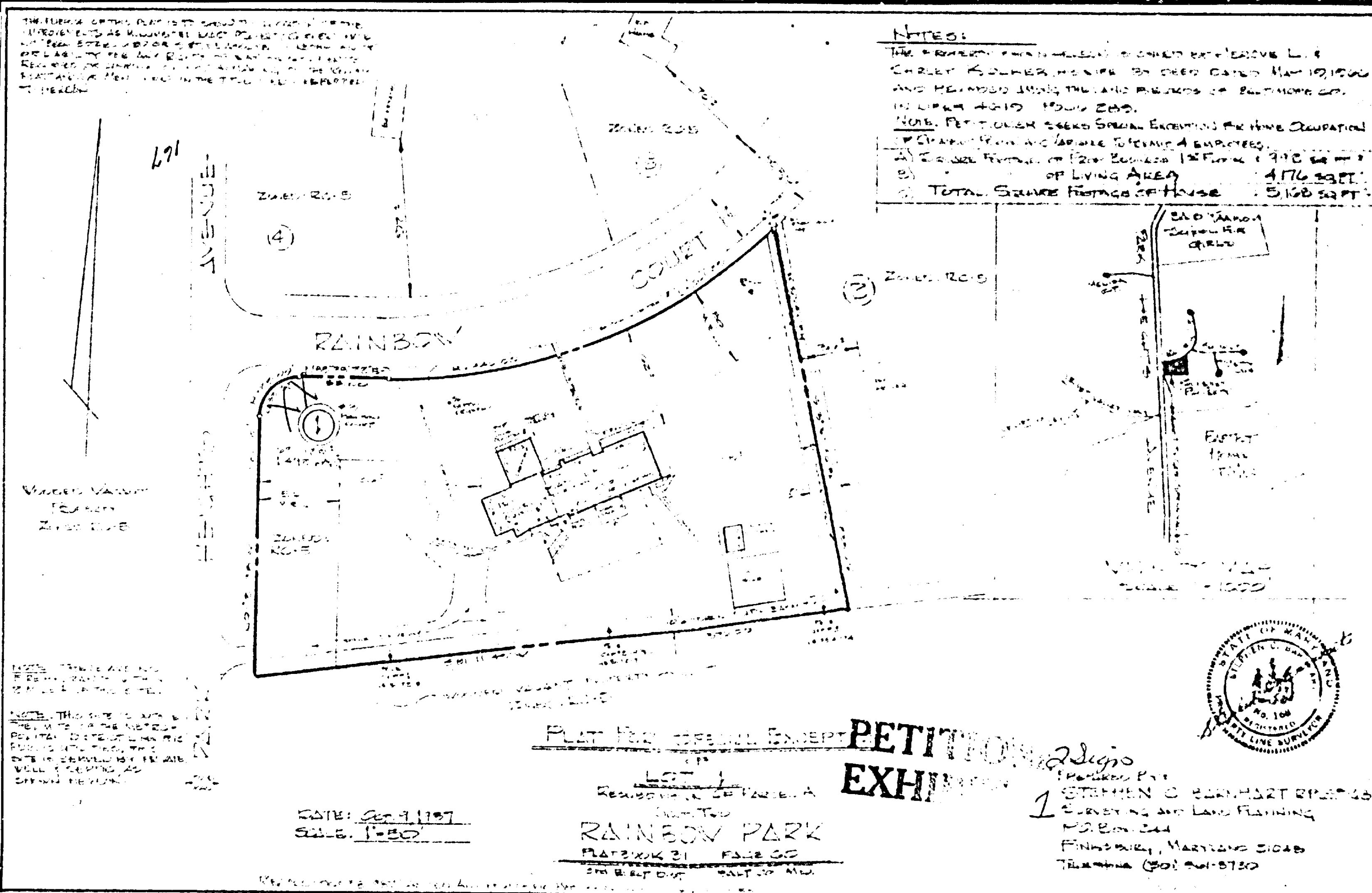
Very truly yours,
SHILING AND BLOCH, P.A.

Thomas G. Garrison
Thomas G. Garrison

TGC/cl
Enclosure

cc: Jerome C. Kolker

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JAN 23 1988
ZONING OFFICE



By reason of the requirements of Sections 502.1 and 1801.1.C.9A of the Baltimore County Zoning Regulations having been met and the health, safety, and general welfare of the community not being adversely affected, the special exception should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 14th day of January, 1987, that the herein Petition for Special Exception to conduct an insurance business from a structure accessory to the petitioner's residence located at 9406 Fullersdale Avenue as a home occupation of a disabled person, in accordance with the site plan prepared by J. S. T. Engineering Company, Inc., dated August 27, 1981, should be and the same is GRANTED, from and after the date of this Order, subject, however, to the following restrictions:

1. An annual medical report detailing the petitioner's physical condition and indicating the status of the disability shall be filed with the Zoning Commissioner, or his designated representative, within ten days of the anniversary date of this Order for each year of the remaining four years of this special exception, unless otherwise terminated by death, termination of disability, or failure of the disabled person to permanently reside on the premises.
2. Only three persons, including the disabled petitioner or members of his immediate family living on the premises, shall be employed.
3. The number of business clients shall be kept to a minimum to lessen the impact of business parking on the residential streets.
4. The lights on the subject property shall be located, positioned, and shielded to direct the light onto the subject site only in order to minimize the intensity and glare off site.
5. The special exception shall terminate five years from the date of this Order, unless extended in accordance with Section 1801.1.C.9A of the Baltimore County Zoning Regulations.
6. Approval of the aforementioned site plan by the Department of Public Works and the Office of Planning and Zoning.

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